IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

ABBOTT LABORATORIES, an Illinois corporation, and LABORATOIRES FOURNIER S.A., a French corporation,

Plaintiffs,

v.

TEVA PHARMACEUTICALS USA, INC., a Delaware corporation,

Defendants.

Case No. 08 C 1243

JUDGE ST. EVE
MAGISTRATE JUDGE DENLOW

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Abbott Laboratories and Laboratoires Fournier S.A., for their complaint against Defendant, Teva Pharmaceuticals USA, Inc., allege as follows:

THE PARTIES

1. Plaintiff Abbott Laboratories ("Abbott") is a corporation organized under the laws of the State of Illinois, having its headquarters and principal place of business at 100 Abbott Park Road, Abbott Park, Illinois 60064.

2. Plaintiff Laboratoires Fournier S.A. ("Fournier") is a French corporation having its principal place of business at 28 boulevard Clemenceau, 21000 Dijon, France.

3. Defendant Teva Pharmaceuticals USA, Inc. ("Teva") is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 1090 Horsham Road, P.O. Box 1090, North Wales, PA 19454-1090.

JURISDICTION AND VENUE

4. This Complaint is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, §§ 1 et seq. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue properly exists in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

6. Personal jurisdiction is proper in this district because Teva routinely transacts business in this district and the State of Illinois.

FACTUAL BACKGROUND

7. Fournier is the owner by assignment of U.S. Patent Nos. (a) 6,277,405 ("the '405 patent")(attached hereto as Exhibit 1), (b) 7,037,529 ("the '529 patent") (attached hereto as Exhibit 2), and (c) 7,041,319 ("the '319 patent") (attached hereto as Exhibit 3). The '405, '529, and '319 patents are collectively referred to herein as the "Patents-in-Suit."

8. The '405 and '529 patents are titled "Fenofibrate Pharmaceutical Composition Having High Bioavailability and Method for Preparing It." The '319 patent is titled "Fenofibrate Pharmaceutical Composition Having High Bioavailability."

9. Abbott is the exclusive licensee of the Patents-in-Suit.

10. The Patents-in-Suit, which each expire on January 9, 2018, each claim novel fenofibrate compositions that exhibit a particular dissolution profile.

11. Fenofibrate is useful as a lipid and cholesterol lowering agent for treatment of adults with increased triglyceride levels.

12. Abbott has approval from the United States Food and Drug Administration ("FDA") to market fenofibrate tablets under the name TRICOR®.

13. TRICOR® (fenofibrate) is included in the FDA's list of "Approved Drug Products With Therapeutic Equivalence Evaluations" also known as the "Orange Book." Approved drugs may be used as the basis of a later applicant's Abbreviated New Drug Application ("ANDA") to obtain approval of the ANDA applicant's drug product under provisions of 21 U.S.C. § 355(j).

14. The FDA's "Orange Book" also lists patents associated with approved drugs. The Patents-In-Suit are listed in the "Orange Book" in association with TRICOR® (fenofibrate).

15. Abbott and Fournier received a letter from Teva stating that Teva had filed an ANDA, designated as No. 90-069, requesting FDA approval to market a generic version of Abbott's TRICOR® tablets in 145mg dosage before the expiration of the Patents-In-Suit.

INFRINGEMENT

16. 35 U.S.C. § 271(e)(2) provides that the submission of an application under 21 U.S.C. § 355(j) for a drug claimed in a patent or for a drug use claimed in a patent is an act of infringement if the applicant seeks FDA marketing approval effective prior to the expiration of the patent. Teva's submission of an ANDA for approval to sell fenofibrate tablets in 145mg dosages prior to the expiration of the Patents-in-Suit patent constitutes an act of infringement of one or more claims of each of the Patents-in-Suit under 35 U.S.C. § 271(e)(2). In addition, Teva's generic version of TRICOR® (fenofibrate) infringes one or more claims of each of the Patents-in-Suit under 35 U.S.C. § 271.

17. Plaintiffs have no adequate remedy at law to redress Teva's infringement.

PRAYER

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

(a) a judgment that each of the Patents-in-Suit patent remain valid and enforceable, and each of the Patents-in-Suit is infringed under 35 U.S.C. § 271(e)(2) by Teva's filing of its ANDA No. 90-069;

(b) an order that the effective date of the approval of ANDA No. 90-069 be subsequent to the expiration date of each of the Patents-in-Suit;

(c) an injunction prohibiting Teva from commercially manufacturing, selling or offering for sale, using, or importing the fenofibrate compositions claimed in the Patents-in-Suit or otherwise infringing one or more claims of the Patents-in-Suit;

(d) damages and/or other monetary relief pursuant to 35 U.S.C. § 284 for any commercial manufacture, use or sale of fenofibrate compositions falling within the scope of one or more claims of the Patents-in-Suit by Teva;

(e) an award of Plaintiffs' interest, costs, reasonable attorneys' fees and such other relief as the Court deems just and proper pursuant to 35 U.S.C. § 271(e)(4) and 35 U.S.C. § 285; and,

(f) such other and further relief as this Court may deem just and proper.

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